

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

DAVID W TAYLOR
Reg #13549-074

PETITIONER

v.

2:19cv00044-BSM-JJV

GENE BEASLEY, *Warden,*
Forrest City Federal Correctional Complex

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted)

was not offered at the hearing before the Magistrate Judge.

3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy or the original of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

I. ANALYSIS

Mr. Taylor filed a *pro se* Petition for Writ of Habeas Corpus on April 18, 2019. (Doc. No. 1.) On April 23, 2019, the Court entered an Order directing Petitioner to pay the required \$5 filing fee or file an Application to Proceed Without Prepayment of Fees and Affidavit. (Doc. No. 2.) Petitioner subsequently filed a Motion for Leave to Proceed *in forma pauperis* and Motion to Waive Filing Fee. (Docs. No. 3 and 4.) These motions were denied on May 14, 2019, and Petitioner was given another 30 days to comply with the Court's Order to either pay the \$5 filing fee or provide a statement about why he is unable to pay the filing fee.¹ (Doc. No. 5.) Petitioner failed to pay the filing fee or provide a statement of need by the deadline provided and the Court recommended the cause of action be dismissed without prejudice on June 20, 2019. (Doc. No. 6.)

¹Local Rule of the Court 5.5(c)(2), states: "It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure."

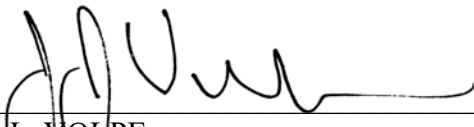
On July 1, 2019, Petitioner filed a Motion for Leave to Proceed *in forma pauperis*. (Doc. No. 7.) One week later, District Judge Brian Miller rejected my recommendation, denied Petitioner's motion, and ordered Mr. Taylor to pay the \$5 filing fee within 14 days to avoid dismissal. (Doc. No. 10.) As of July 23, 2019, Petitioner has still not paid the filing fee as directed. To avoid dismissal, Petitioner should pay the \$5 filing fee or provide a statement of need during the fourteen (14) day objection period. Otherwise, this cause of action should be DISMISSED without prejudice.

II. CONCLUSION

IT IS, THEREFORE, RECOMMENDED THAT:

1. Unless Petitioner pays the \$5 filing fee or files a statement about why he is unable to pay the filing fee during the fourteen (14) day objection period, this cause of action (Doc. No. 1) should be DISMISSED without prejudice.

DATED this 23rd day of July 2019.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE